out more; or in accepting the broad rule here laid down as governing the courts of equity in applying the Statute of Limitations. Yet English authority is in accord with the case on both points (*Ecclesiastical Commissioners* v. *N. E. R. Co.*, 4 Ch. Div. 845; Bainbridge, Law of Mines, 311). Certainly the doctrine that equity will not apply the Statute of Limitations before the plaintiff has been guilty of laches appears sound on principle (*Brooksbank* v. *Smith*, 2 Y. & C. 58) and thoroughly sensible. The case is likely to be followed when the question arises in other jurisdictions. To be sure, the court in the principal case attempts to lay down, as another reason for not applying the statute, that failure to disclose an inadvertent trespass is fraud; but that position seems indefensible either on principle or authority (*Dawes* v. *Bagnall*, 23 W. R. 690).

Breach of Contract to Deliver in Instalments.— A recent New Jersey case (*Gerli* v. *Poidebard Silk Mfg. Co.*, 31 Atl. 401) denies the doctrine of *Norrington* v. *Wright*, 115 U. S. 188, that, when there is a contract to deliver goods in instalments, a failure as to the first instalment gives the buyer a right to terminate the contract. In the New Jersey case the agreement called for the delivery of thirty bales of silk in three equal monthly instalments, and the defendant was held unjustified in cancelling the contract upon a failure to deliver the first instalment. The ground for this decision seems to have been that the plaintiff's breach did not evince an intention to abandon the contract, or not to be bound by its terms, following the English rule laid down in *Mersey Steel Co.* v. *Naylor*, 9 App. Cas. 434.

Neither the rule in *Norrington* v. *Wright*, which perhaps would not be followed literally by the United States Supreme Court, nor the one recognized by the New Jersey Court, seems satisfactory in all cases. A breach in regard to the first instalment ought not to be fatal to the entire contract, unless of such extent or nature as substantially to imperil the objects of the contract, or to create a reasonable apprehension of such a consequence. Other things being equal, doubtless an abandonment of the contract is often justified by a breach *in limine* of less magnitude than would be required if it occurred after part performance by the party in default; but this is not merely because the breach occurs at the outset, but because a breach at that time may be more significant of ultimate failure than one that happens later, and especially because no equities have been created between the parties by benefits received under the contract.

On the other hand, any breach that does substantially interfere with the objects of the contract ought to be good ground for a rescission or abandonment, no matter how excellent the intentions of the party in default. That the aggrieved party may obtain compensation for future breaches as well as past ones, should his confidence prove misplaced, does not help the New Jersey argument very much. The same might be said of any contract whose conditions have been partly but substantially violated, and the abandonment of a broken contract would seldom be legally possible to the innocent party. Whatever may be the ethical importance of good intentions they manifestly have little commercial value to the man who sees a lawsuit between himself and the realization of the profits of his contract.

It is hardly good common sense, and it is difficult to believe it is good

law, to compel a purchaser either to rely upon the uncertain future performance of a seller already in default, or to buy his goods elsewhere at the risk of responding in damages should the original vendor prove prepared to fulfil the remainder of his contract. On the facts of this particular case the dissenting opinion of Van Syckel, J., seems the better view.

ANOTHER TURNTABLE DECISION. — An interesting and only too frequent problem presented to courts for solution is whether a little fellow attracted by an unfastened turntable can recover against a railroad company for negligence, — a question usually depending entirely upon the existence of a duty in the case. In *Walsh* v. *Fitchburg R. Co.*, 39 N. E. R. 1068, reversing *Walsh* v. *Fitchburg R. Co.*, 28 N. Y. Supp. 1097, the New York Court of Appeals has expressed a strong opinion, almost decided, — almost, for the case is, perhaps, explainable on other grounds, — that he cannot. This result is, doubtless, in accord with some of the most carefully considered judgments on this point, but is, on the whole, rather against the numerical weight of authority. The latter cases, while not claiming that landowners must furnish safe premises for trespassers, contend that contrivances introduced, liable to allure children, must not be carelessly allowed to become death-traps for the young and unwary. This doctrine, although attempting to distinguish between juvenile and adult trespassers, and easily capable of being made ridiculous by too great an extension, seems fair and just enough if properly limited, as in this connection. There is no endeavor to impose an insurer's liability, only reasonable care of a most dangerous thing is demanded; nor is it hoped that vicious children can be kept away, only those who are unaware of the peril are to be protected. In some jurisdictions, the feeling that parents should be compelled to look out for their infants, and the undoubted practical truth that any recovery by the child would probably inure to the benefit of the careless guardians, have had great weight. In New York, however, where the doctrine of imputed negligence still flourishes, that reason would seem of little force. From the theoretical point of view much can be said on either side, but one cannot but sympathize with the more merciful and less technical rule, the one at which, perhaps unfortunately, the New York court did not arrive.

VICE-PRINCIPAL DOCTRINE. — The doctrine of vice-principal is one whose value, theoretical and practical, may well be doubted; nor do the tests which are used in its application render it more attractive. In *Blomquist* v. *C., M. & St. P. Ry. Co.* (Supreme Court of Minnesota, Apr. 9, 1895), the difficulty of a satisfactory determination as to when the superior servant is a vice-principal, has lead to a vigorous dissent by Canty, J., in which some novel and interesting principles are laid down. The theory of the learned judge seems to be that the mere authority to hire, discharge, or oversee, is not the correct test, but that the disparity must be more substantial, such as disparity of knowledge or disparity of skill. Although it is, perhaps, impossible in the present state of the law on this subject (8 HARVARD LAW REVIEW, 57) to judge accurately of the weight which is to be attached to such thoughtful discriminations, yet the careful opinion of Canty, J., is one which cannot profitably be disregarded by any person interested in the development of this doctrine.